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9 Attorneys for Defendant and Counterclaimant,  
Blockbuster Inc.

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12

13 NETFLIX, INC., a Delaware corporation,

14 Plaintiff,

15 vs.

16 BLOCKBUSTER INC., a Delaware corporation,  
17 DOES 1-50,

18 Defendants.

19 AND RELATED COUNTER ACTION.  
20

CASE NO. C 06 2361 WHA (JCS)

**ADMINISTRATIVE MOTION TO  
FILE DOCUMENT UNDER SEAL  
AND WITHDRAW DOCUMENT  
FILED PUBLICLY; SUPPORTING  
DECLARATION**

Hearing Date: January 31, 2007  
Time: 1:30 p.m.  
Courtroom: 9, 19th Floor  
Judge: William H. Alsup  
Complaint Filed: April 4, 2006

21 Defendant and Counterclaimant, Blockbuster Inc., moves under Civil Local  
22 Rules 7-11 and 79-5 to file under seal a Confidential Appendix to the Declaration of William J.  
23 O'Brien in Support of Blockbuster's Brief on Claim Construction, containing Exhibit G to that  
24 declaration, and to withdraw Exhibit G from the public record. As is set forth in the declaration  
25 below, this motion is in response to a request from counsel for Plaintiff and Counterdefendant,  
26 Netflix, Inc., and Netflix's counsel have stated that they do not oppose this request to file under  
27 seal.

28 As is detailed in the supporting declaration below, Netflix has requested that

1 Exhibit G be withdrawn from the public record on the ground that it contains information that is  
2 confidential under the protective order in this case.

3 Copies of the proposed Confidential Appendix will be lodged with the Court. A  
4 proposed order will be submitted concurrently with this motion.

5  
6 DATED: December 29, 2006

ALSCHULER GROSSMAN STEIN & KAHAN LLP

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8 By \_\_\_\_\_/S/  
9 William J. O'Brien  
10 Attorneys for Defendant and Counterclaimant,  
11 Blockbuster Inc.  
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**DECLARATION IN SUPPORT OF ADMINISTRATIVE MOTION**

I, William J. O'Brien, declare:

1. I am an attorney admitted to practice before this Court and a partner in Alschuler Grossman Stein & Kahan LLP, counsel of record for Defendant and Counterclaimant, Blockbuster Inc., in this case. I have personal knowledge of the facts set forth below, and if called to testify as a witness thereto could do so competently.

2. On December 27, 2006, Blockbuster filed its Claim Construction Brief and a Declaration of William J. O'Brien in Support of Blockbuster's Brief on Claim Construction. Exhibit G to the Declaration consists of excerpts from the deposition of Eric Meyer taken in this case on September 22, 2006.

3. The Meyer deposition was taken before the entry of a protective order in this case on October 23, 2006. The deposition was taken under an agreement between counsel for the respective parties providing for interim protection of deposition materials designated as confidential.

4. In a letter dated October 26, 2006, counsel for Netflix stated that certain portions of the Meyer deposition transcript were designated as confidential. This designation was combined in the same letter with sections addressing multiple other topics, and the letter was overlooked in the course of preparing Exhibit G.<sup>1</sup> The testimony contained in Exhibit G was designated as confidential in the October 26 letter.<sup>2</sup>

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<sup>1</sup> The October 26 letter does not appear to have been received within ten business days after receipt of the transcript, which is the time frame referred to in counsels' interim arrangement and in the protective order. However, Blockbuster is willing to accommodate Netflix in this regard.

<sup>2</sup> The designation in the October 26 letter encompassed all of the testimony in Exhibit G. The remainder of Exhibit G merely consists of the deposition cover sheet, the introduction and appearances, the reporter's certification, and some incidental colloquy about taking a break during the deposition.

